

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45

**REPLY COMMENTS
OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) files these reply comments in response to the Federal Communications Commission’s (“Commission”) *Notice of Inquiry*¹ seeking to refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit (“Tenth Circuit” or “Court”) in the *Qwest II* decision.²

It has been over twelve years since Congress passed the Telecommunications Act of 1996, but the Commission still has not put in place a mechanism for distributing high-cost support to non-rural carriers that withstands legal scrutiny. Twice the Tenth Circuit has remanded the funding mechanism to the Commission with instructions to implement or justify a valid mechanism. And yet still, non-rural carriers receive high-cost support through a funding mechanism the Tenth Circuit invalidated for the second time over four years ago. But, the Commission has recently told the Tenth Circuit that it will release a final order that responds to the Court’s remand no later than April 16, 2010, and has initiated this proceeding to honor that commitment.³ Having done so, the Commission should focus its attention in this proceeding on

¹ See *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*; 24 FCC Rcd 4281 (2009) (“*Tenth Circuit Remand NOI*”).

² *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

³ Response of FCC to Petition for a Writ of Mandamus, No. 09-9502 (10th Cir., filed Mar. 6, 2009).

implementing a valid mechanism for distributing high-cost support to non-rural carriers for currently supported services.

As Qwest and others have noted, it is not necessary for the Commission to address universal service support for broadband in this proceeding.⁴ Nor is this the place for addressing more comprehensive reform of the high-cost program or universal service generally. Such additional reform is absolutely needed. But, past experiences have shown that the Commission's efforts to address more holistic reform, albeit well-intentioned, have only served to delay resolution of its obligations under the Tenth Circuit remand in *Qwest II*.

In this proceeding the Commission should finally implement a valid funding mechanism for distributing high-cost support to non-rural carriers for services currently supported pursuant to Section 254(c). And, receipt of that funding should not be conditioned on the provision of services that are not currently supported pursuant to that section. Universal service support for deployment of broadband should be addressed through a separate mechanism in a separate proceeding.⁵

Ultimately, the Commission needs to appropriately define “reasonably comparable” rates and services and “sufficient” support so as to implement a funding mechanism that preserves and advances universal service. There is considerable agreement that a critical piece of this effort is to quit using statewide average costs to allocate support and instead re-target support more

⁴ See, e.g., NASUCA Comments at 53-54 (stating that “[b]roadband issues should be dealt with in a broader context, as with the Joint Board’s proposal for a separate broadband fund”); Rural Cellular Association Comments at 7 (recognizing that “fashioning programs to fund broadband deployment is beyond the scope of this remand proceeding”); USTelecom Comments at 2 (stating that questions of “whether or how high-cost support should apply to broadband need not be addressed in this proceeding.”).

⁵ See Ohio Public Utilities Commission at 11 (“different societal goals should be met through different mechanisms.”).

directly to high-cost areas throughout the nation.⁶ Qwest has proposed that the Commission target support to wire centers with costs that exceed 125 percent of the national average urban rate.⁷ Presumably, if support is being provided where *costs* exceed 125 percent of the national average urban rate, support is also being provided where *rates* could legitimately exceed 125 percent of the national average urban rate. Providing sufficient support to these high-cost areas should permit rates and services for these areas that are reasonably comparable to rates and services in urban areas.

As several commenters noted, the mechanism for distributing support should be cost-based.⁸ Along with the cost-based support mechanism that the Commission ultimately adopts, the Commission must have a process for confirming that rates and services in supported high-

⁶ See, e.g., AT&T Comments at 32 (stating that “the Commission must jettison statewide averaging and target support to wire centers or to census block groups (or portions of census block groups) within wire centers”); Embarq Comments at 12 (advocating that “high-cost support should be directed at a granular geographic unit, such as a wire center, to remove most of the problems in providing sufficient support that are caused by study-area averaging”); ITTA Comments at 3 (proposing that the Commission “target[] high-cost loop support to high-cost wire centers (not study areas) where it is needed most”); Iowa Telecom Comments at 8 (supporting Embarq BCS Proposal in part because it targets support for serving wire center loop costs, which properly replaces implicit subsidies from customers served in denser portions of same study area with explicit support for rural and high-cost areas); Nebraska PSC Comments at 3 (stating that better targeting support to rural areas is critical and because costs vary greatly across wire centers, support should be provided on a more granular level); USTelecom Comments at 3-5 (explaining that the use of statewide averaging and study area averaging and lack of more granular targeting “negatively impacts companies’ ability to provide quality services . . .”); Windstream Comments at 15 (advocating that the Commission eliminate the practice of statewide averaging, and instead base support “on the costs conditions solely of each wire center”).

⁷ *Ex parte* letter from R. Davis and S. Bloomfield, Qwest to M. Dortch, FCC, CC Docket No. 96-45 and WC Docket No. 05-337, filed May 5, 2008 at page 2 of 3 and attached Proposal for Implementing the Tenth Circuit’s Remand in *Qwest II* at page 24 of 28.

⁸ See, e.g., OPA (Maine Office of Public Advocate) Comments at 26 (stating that “local rates should not be the starting point for support calculations” as they can be affected by state rate actions); Ohio Public Utilities Commission Comments at 9 (explaining that different conditions impact costs of services verses rates for service and basing universal service support only on a rate comparison will not provide high-cost support where it is truly needed).

cost areas are reasonably comparable to rates and services in urban areas. This should be done through a state certification process where the Commission defines the comparability test that is to be applied. That comparison should comport with the Commission’s obligation to preserve and advance universal service, which could – but does not have to – include narrowing the gap between urban and rural rates.⁹

To define “sufficient” support the Commission should consider all Section 254(b) principles, but does not need to incorporate all the principles into the definition.¹⁰ The Commission can and should give more weight to some principles, with reasonable comparability having the greatest weight.¹¹ Sufficient support should offset high costs above the high-cost benchmark to a reasonable degree so as to enable the provision of quality services at just, reasonable, and affordable rates in high-cost areas that are reasonably comparable to the services and rates offered in urban areas. Simultaneously, sufficient support must be defined to prevent excessive universal service contribution fees.

To satisfy its obligations under the Tenth Circuit remand the Commission should (1) modify the manner in which it distributes support to high-cost areas by re-targeting that support more directly to high-cost areas and adjusting the high-cost benchmark, (2) implement a state certification process to demonstrate that customers in high-cost areas are being provided “reasonably comparable” rates and services, and (3) provide support that will sufficiently offset

⁹ As ITTA has noted, re-targeting support advances universal service “by bringing fuller benefits of universal service to areas that had received lesser levels under the current formulae.” ITTA Comments at 9.

¹⁰ *Accord*, Vermont/Maine Comments at 19-20 (stating that the Commission does not need to satisfy all the Section 254(b) principles through the high-cost program).

¹¹ *Accord*, USA Coalition Comments at 6-8 (stating that the Commission consider all principles but give greatest weight to “reasonable comparability”).

high costs of service without requiring excessive contributions to the federal universal service fund.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: /s/ Tiffany West Smink
Craig J. Brown
Tiffany West Smink
Suite 950
607 14th Street, N.W.
Washington, D.C. 20005
303-383-6619
craig.brown@qwest.com
tiffany.smink@qwest.com

Its Attorneys

June 8, 2009

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be 1) filed
with the FCC via its Electronic Comment Filing System in WC Docket No. 05-337 and CC
Docket No. 96-45; 2) served via e-mail on Ms. Antoinette Stevens, Telecommunications Access
Policy Division, Wireline Competition Bureau at antoinette.stevens@fcc.gov; 3) served via e-
mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com; and
4) served via First Class United States mail, postage prepaid, on the parties listed on the attached
service list.

/s/Eileen Kraus

June 8, 2009

David C. Bartlett
John E. Benedict
Jeffrey S. Lanning
Embarq
Suite 820
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

Brian K. Staihr
Embarq
5454 110th Street
Overland Park, KS 66211

Tina Pidgeon
General Communication, Inc.
Suite 312
1130 17th Street, N.W.
Washington, DC 20036

John T. Nakahata.....GCI
Christopher Nierman
Wiltshire & Grannis LLP
Suite 1200
Eighteenth Street, N.W.
Washington, DC 20036

Eric N. Einhorn
Jennie B. Chandra
Windstream Communications, Inc.
Suite 802
1101 17th Street, N.W.
Washington, DC 20036

Cathy Carpino
Christopher Heimann
Gary L. Phillips
Paul K. Mancini
AT&T Services, Inc.
Suite 1000
1120 20th Street, N.W.
Washington, DC 20036

Todd D. Daubert.....USA Coalition
J. Isaac Himowitz
Kelley Drye & Warren LLP
Suite 400
3050 K Street, N.W.
Washington, DC 20007

Todd B. Lantor.....RCA
John Cimko
Lukas, Nace, Gutierrez & Sachs, LLP
Suite 1500
1650 Tysons Boulevard
McLean, VA 22102

Edward Shakin
Christopher M. Miller
Verizon
Suite 500
1515 North Court House Road
Arlington, VA 22201

John T. Scott, III
Tamara L. Preiss
Verizon Wireless
Suite 400 West
1300 I Street, N.W.
Washington, DC 20005

Bennett Ross.....Verizon
Priscilla Delgado
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Steven N. Teplitz
Terri B. Natoli
Time Warner Cable Inc.
Suite 800
901 F Street, N.W.
Washington, DC 20004

Michael F. Altschul
Christopher Guttman-McCabe
Scott K. Bergmann
CTIA – The Wireless Association
Suite 600
1400 16th Street, N.W.
Washington, DC 20036

Shana Knutson
Nebraska Public Service Commission
300 The Atrium Building
1200 N Street
Lincoln, NE 68508

George Young
Vermont Public Service Board
Drawer 20
112 State Street
Montpelier, VT 05620-2601

Joel Shifman
Maine Public Utilities Commission
242 State Street
Augusta, ME 04333-0018

David C. Bergmann
National Association of State Utility
Consumer Advocates
Suite 1800
10 West Broad Street
Columbus, OH 43215-3485

NASUCA
Suite 101
8380 Colesville Road
Silver Spring, MD 20910

D. Michael Anderson
Edward B. Krachmer
Iowa Telecommunications Services, Inc.
115 S. Second Avenue West
Newton, IA 50208

Gregory J. Vogt.....Iowa Tel
Law Offices of Gregory J. Vogt, PLLC
Suite 200
2121 Eisenhower Avenue
Alexandria, VA 22314

Jonathan Banks
David Cohen
United States Telecom Association
Suite 400
607 14th Street, N.W.
Washington, DC 20005

Joshua Seidemann
Independent Telephone &
Telecommunications Alliance
Suite 501
1101 Vermont Avenue, N.W.
Washington, DC 20005

Jeanne M. Fox
New Jersey Board of Public Utilities
8th Floor
Two Gateway Center
Newark, NJ 07102

Neal M. Goldberg
Steven F. Morris
National Cable &
Telecommunications Association
Suite 100
25 Massachusetts Avenue, N.W.
Washington, DC 20001-1431

Richard Cordray
Duane W. Luckey
Sarah J. Parrot
Public Utilities Commission of Ohio
9th Floor
180 East Broad Street
Columbus, OH 43215-3793

Richard A. Askoff
National Exchange Carrier
Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Daniel Mitchell
Karlen Reed
National Telecommunications
Cooperative Association
10th Floor
4121 Wilson Boulevard
Arlington, VA 22203

Stuart Polikoff
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
Suite 700
21 Dupont Circle, N.W.
Washington, DC 20036

Jerry Weikle
Eastern Rural Telecom Association
5910 Clyde Rhyne Drive
Sanford, NC 27330

Derrick Owens
Western Telecommunications Alliance
Suite 300 C
317 Massachusetts Avenue, N.E.
Washington, DC 20002